

# United States Senate

WASHINGTON, DC 20510

September 13, 2017

The Honorable Maureen Ohlhausen  
Acting Chairman  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Dear Acting Chairman Ohlhausen:

We write to convey our concerns with certain recent practices in the ticket resale market and to request the FTC review the use of “white label” or “private label” marketing programs in the online ticket resale industry.

The event ticket resale industry has proven to be a boon to consumers and event organizers alike. Like so many other commercial spheres improved by the internet’s capacity to reduce transaction costs and bring disparate buyers and sellers together, the market for ticket resales has thrived in recent years. But – as in almost any market that exists primarily online – vigilance in protection of consumers is paramount. We are specifically concerned with reports about three types of possibly anti-consumer behavior in this industry.

First, we understand that certain actors in the market employ practices to confuse consumers regarding the identity of vendors. Several private label domains appear to intentionally suggest to consumers a direct and formal affiliation with a particular event venue. For example, our staffs recently entered the search “Madison Square Garden Tickets” into an online search engine, only to find the top paid result “madisonsquaregarden.ticketoffices.com.” This domain is not at all affiliated with the venue, but is owned by a third-party vendor. Such a domain name may suggest to consumers that they are receiving an original ticket price without a resale markup, or at a minimum may convey a level of reliability not warranted by the relationship between the third party and the venue. This was precisely the type of conduct that merited the 2014 complaint filed by the FTC against TicketNetwork and its private label partners.

Second, even where a private label domain name does not create the undue impression of association with a venue, such a label may still obfuscate the kind of choice a consumer enjoys when shopping online. For example, private label sites are typically granted full access to a resale company’s ticket inventory as well as its fulfillment operations and processing services, essentially becoming a front for the same inventory and back-end operations as the resale company itself. While there are, undoubtedly, perfectly legitimate reasons ticket resale vendors would opt to create private labels, it is apparent that one possible purpose for these arrangements is to create the impression that these private labels are distinct from and unconnected to the original resale company brand. By doing so, these resale companies may be able to skirt and subvert search engine marketing policies that are intended to assure consumers enjoy true choice

between the vendors appearing in search results. When a consumer sees *only* a resale vendor and its various private label affiliates – entities that are connected, but for appearances' sake, distinct – serious transparency problems arise.

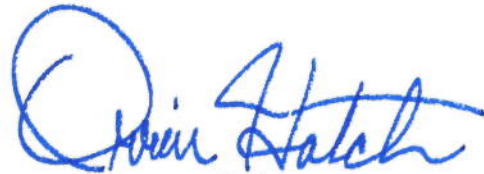
Finally, private labels are sometimes used to conceal high, hidden service fees from consumers. As mentioned above, private labels often employ the exact same inventory and processing as their affiliated resale company. The profit margin for these private brands, then, is often found in an additional markup. There is, of course, a market corrective to such additional fees: consumers are unlikely to pay a private label more for the exact same product that can be found elsewhere. However, some private label domains have taken to disclosing such markups and fees only at the end of the checkout process, thus preventing the kind of price comparison which would otherwise discipline pricing.

Consumers and regulators are used to seeing private labels – in everything from groceries to house cleaning services, in markets online and otherwise. That said, such private labels are liable to abuse if not monitored closely, and especially so online. Therefore, we respectfully ask that the FTC review the use of private labels as vehicles for confusion, price obfuscation, and overall consumer harm. We appreciate your prompt review of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Booker", with a stylized flourish at the end.

Senator Cory Booker

A handwritten signature in blue ink, appearing to read "Orrin Hatch", with a large circular flourish at the beginning.

Senator Orrin Hatch